
SCOTTISH STATUTORY INSTRUMENTS

2020 No.

ENVIRONMENTAL PROTECTION

The Environmental Protection (Disposal of
Polychlorinated Biphenyls and other Dangerous
Substances) (Scotland) Amendment Regulations 2020

Made - - - -

Laid before Parliament

Coming into force - - .

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

Citation and commencement

1.—These Regulations may be cited as the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 and come into force on 14 February 2021.

Amendment of the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000

2. —(1) The Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000(b) are amended as follows.

(2) In regulation 2(1), in the definition of “PCBs”, for “4(3) and (4), 5(3), 6(2) and 9(3)” substitute “4(3A), (3C) and (4), 5(3) and 9(3)”.

(3) In regulation 4—

(a) in paragraph (1), for “(2), (3)” substitute “(2) to (3D)”;

(b) for paragraph (3), substitute—

(a) 1972 c 68 (“the 1972 Act”). The 1972 Act was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c. 16) (“the 2018 Act”) with effect from exit day (see section 20 of the 2018 Act), but saved subject to modifications, until IP completion day by section 1A of the 2018 Act. Section 1A of the 2018 Act was inserted by the European Union (Withdrawal Agreement) Act 2020 (c.1) (“the 2020 Act”), and defines “IP completion day” by reference to section 39(1) to (5) of the 2020 Act. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”). Section 2(2) of the 1972 Act was also amended by section 27(1) of the 2006 Act and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7). The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) S.S.I. 2000/95, amended by S.S.I. 2011/226, 2018/391 [and 2019/26].

“(3A) Paragraph (3B) applies to a transformer in respect of which it is reasonable to assume that the fluids contain—

- (a) 0.005% by weight, or less, of PCBs; or
- (b) a total volume of 0.05 dm³, or less, of PCBs.

(3B) A transformer to which this paragraph applies—

- (a) may be held until the end of its useful life; and
- (b) must then be decontaminated in accordance with paragraph (4)(b) to (d), or disposed of, as soon as possible.

(3C) Paragraph (3D) applies to a transformer in respect of which it is reasonable to assume that the fluids contain—

- (a) more than 0.005% but no more than 0.05% by weight of PCBs; and
- (b) a total volume of more than 0.05 dm³ of PCBs.

(3D) A transformer to which this paragraph applies—

- (a) may be held until the end of 31st December 2025; and
- (b) must then be decontaminated in accordance with paragraph (4)(b) to (d), or disposed of, as soon as possible.”;

(c) in paragraph (4)(a), for “less than 0.05% by weight and, if possible, to no more than 0.005% by weight” substitute “0.005% by weight, or less, or a total volume of 0.05 dm³, or less”;

(d) in paragraph (9)—

- i. in paragraph (a), for “(2), (3)” substitute “(2) to (3D)”;
- ii. in paragraphs (b) and (c), for “not contaminated”, in both places it occurs, substitute “relevant”;

(e) after paragraph (9) insert—

“(10) In paragraph (9), “relevant equipment” means any equipment (including any capacitor or receptacle containing residual stocks) which—

- (a) contains PCBs; or
- (b) having contained PCBs, has not been decontaminated, other than one which contains a total volume of PCBs exceeding 0.05 dm³.

(11) For the purposes of paragraph (10)—

- (a) the PCB volume of a power capacitor shall be measured by reference to all of the separate elements of a combined set; and
- (b) any thing of a type which may contain PCBs shall be treated as containing PCBs unless it is reasonable to assume the contrary.”

(4) For regulation 5(3) substitute—

“(3) Equipment in respect of which it is reasonable to assume that the fluids contain—

- (a) 0.005% by weight, or less, of PCBs; or
- (b) a total volume of 0.05 dm³, or less, of PCBs, may be labelled as “PCBs contaminated <0.005% or <0.05 dm³.”.

(5) Omit regulation 6(2)(b).

(6) In regulation 10, in paragraph (1), for “(2), (3)” substitute “(2) to (3D)”.

- (7) For regulation 13(2)(c)(i), substitute—
“(ia) in a case to which regulation 4(3A) applies, as soon as possible after the end of its useful life;
(ib) in a case to which regulation 4(3C) applies, as soon as possible after 31st December 2025;”.

Name

A member of the Scottish Government

St Andrew's House,
Edinburgh

2020

EXPLANATORY NOTE

(This is not part of the Regulations)

These Regulations partially implement Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (recast) (OJ No. L 169, 25.6.2019, p. 45).

The Regulations amend the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Regulations 2000 ("the 2000 Regulations").

Regulation 2(3)(b) amends regulation 4 of the 2000 Regulations by replacing paragraph (3) with new paragraphs (3A) to (3D). This amendment partially implements the second sentence of the entry in the fourth column of the row relating to Polychlorinated Biphenyls in the table at Part A of Annex 1 to Regulation (EU) 2019/1021 which requires Member States to identify and remove from use equipment (e.g. transformers, capacitors or other receptacles containing liquid stocks) containing more than 0.005 % PCBs and volumes greater than 0.05 dm³, as soon as possible but no later than 31st December 2025.

Regulation 2(3)(c) amends regulation 4 of the 2000 Regulations by changing paragraph (4)(a), the objective of decontamination of transformers, to “0.005% by weight, or less, or a total volume of 0.05 dm³, or less.”

Regulation 2(3)(d) amends regulation 4 of the 2000 Regulations by providing that paragraph (9) applies to equipment containing PCBs not covered by paragraphs “(2) to (3D)” and is “relevant equipment” which is “part of another piece of equipment which is also relevant equipment”.

Regulation 2(3)(e) amends regulation 4 of the 2000 Regulations by adding paragraphs (10) and (11) which define “relevant equipment” for the purposes of the new amended paragraph (9).

Regulation 2(4) amends regulation 5 of the 2000 Regulations by replacing paragraph (3) with a labelling requirement for equipment containing 0.005% PCBs, or less, and volumes of 0.05 dm³. Regulation 2(5) amends 6 of the 2000 Regulations by omitting paragraph 2(b).

Regulation 2(7) amends regulation 13 of the 2000 Regulations by separating paragraph (2)(c)(i) into two separate offences: (1) an offence for failure to decontaminate or dispose of transformers with PCB levels less than 0.005% or 0.05dm³ as soon as possible after the end of their useful life; and, (2) an offence for failure to decontaminate or dispose of transformers with PCB levels of 0.005-0.05% and a total volume of greater than 0.05dm³ as soon as possible after 31 December 2025.

A Business Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Scottish Government, Environmental Quality Division, Area 3H South, Victoria Quay, Edinburgh, EH6 6QQ, and online at legislation.gov.uk.